THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.8190 of 1997

Dated:24.1.2007

Between

The Executive Engineer, Andhra
Pradesh State Irrigation Development
Corporation Limited, Division,
Collectorate Complex, Karimnagar.

.....Petitioner

and

1. The Authority under payment of wages
and Assistant Commissioner of Labour,
Karimnagar and others and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.8190 of 1997

ORDER:

This writ petition is filed being aggrieved by the order passed by the Authority under Payment of Wages Act and Assistant Commissioner of Labour, Karimnagar in P.W.Case No.13 of 1996 dated 6.3.1997.

This writ petition is filed by the Corporation-opposite party. The respondents 2 to 11 (applicants) filed the said P.W.Case stating that they are working under the control of the Corporation-opposite party for more than five years. They were paid wages as per the S.S.R rates till 1993-1994. However, when they were not paid the enhanced wages as per the S.S.R rates for the years 1994-1995 and 1995-1996, they have approached the

Corporation-opposite party for payment of the wages as per the revised S.S.R rates. But, the same were not paid. The opposite party has illegally deducted the amounts due to them for the last two years. The total dues of wages were estimated at Rs.49,189-00 in respect of respondents 2 to 11 (10 in number). Ex.A1 is the statement showing the detailed calculation of the claim amount. Ex.A2 is the letter dated 18.3.1992 addressed by the opposite party to the Managing Director of the Corporation.

The Corporation-opposite party-petitioner herein filed a counter stating that the respondents 2 to 11-applicants were engaged as NMRs on daily wages as per the SSR rates. Further it is stated that the Vice Chairman and Managing Director was requested to revise the rates of wages to the employees from time to time. The applicants never represented for revision of wages. The opposite party never deducted any wages of applicants and also stated that they have no authority to revise the wages. The letter dated 26/29.11.1993 received from the Vice Chairman and Managing Director, APSIDC, Hyderabad was without approval of the Registered Office. He also addressed a letter dated 30.1.1995 requesting to communicate the orders for payment of revised wages as per the SSR rates for the year 1994-95. He also addressed a letter dated 26.12.1995 to the Head Office to revise the rates as per SSR rates.

On behalf of the applicants and opposite party, no oral evidence was let in. However, on behalf of the applicants, Exs.A1 and A2 were marked. On behalf of the opposite party Exs.R1 to R7 were marked.

After a detailed consideration of the entire evidence on record, the Court below held as under:

> “The admitted facts in this case are that the applicants are NMR workers employed on daily wage basis. All these workers are working for more than 5 years. These workers are paid wages as per SSR rates till 1993-94. Thereafter the

wages payable to the applicants are not revised, though SSR rates are revised every year. Therefore, the applicants preferred this claim claiming difference of wages from 7/94 to 6/96 for an amount of Rs.49,189-00. Ex.A1 shows the details of claim.

The opposite party agreed that the wages of applicants were not revised after 1993-94 because the Vice-chairman and Managing Director, APSIDC, Hyderabad has not issued orders to that effect. In support of this the opposite party filed various documents and stated in the absence of any sanction from their head office he cannot increase the wages. As such the claim of applicants is not correct. Further, the opposite party stated their head office has issued instructions to pay revised wages as per G.O.Ms.No.111, dated 26.11.1993, Women Development, Child Welfare and Labour Department (Lab.II) which fixed wages in the employment of Construction of Projects including Dams and Multipurpose Projects under Minimum Wages Act, 1948 along with cost of living index. These wages are payable from 29.6.1996 as per the instructions. Therefore stated the applicants cannot claim arrears of wages.

The fact is the opposite party for several years paying wages to the NMR workers as per the SSR rates. This practice of implementing of SSR rates was followed by him till 1993-94. Thereafter he has stopped implementing revised SSR rates, under plea that their head office not gave approval. At the same time the opposite party's corporation after obtaining approval of Government from 29.6.1996 onwards adopted the wages as fixed under Minimum Wages Act. Accordingly, the opposite party is paying revised wages from 29.6.1996 onwards. But the opposite party who adopted SSR rates all these years for payment of wages to NMR workers has not revised the wages for 1994-95 and 1995-96 which is not correct. The workers cannot be derived of

their right to payment of wages at the revised rates. Therefore, I direct the opposite party to pay the difference of wages as per the revised SSR rates for the period from 7/94 to 6/96 to the applicants.

Accordingly, I direct the opposite party to deposit the total claim amount of Rs.49,189-00 (Rupees Forty Nine Thousand One Hundred and Eighty Nine only) in a way of Demand Draft drawn in favour of "Authority under Payment of Wages Act and Assistant Commissioner of Labour, Karimnagar" within (30) days of receipt of this order."

Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that the very petition filed under Section 15 of the Payment of Wages Act, 1936 is not maintainable and the Authority has no jurisdiction to entertain such an application.

May be respondents 2 to 11-applicants are entitled for SSR rates, the revised SSR rates were not being paid, it is for the petitioner to approach the Labour Court or file a case under the Minimum Wages Act for the respondents-applicants and they cannot maintain a petition of this nature. In this regard, learned counsel for the petitioner also relied upon the Judgments of the Apex Court reported in **A.V.D'Costa, Divisional Engineer, GIP,Railway, v. B.C. Patel** and another and **Administrator, Krishi Upaj Mandi Samiti, Doongargarh v. Gauri Shanker** and submitted that in view of the above Judgments, the very petition before the 1st respondent is not maintainable.

The fact that respondents 2 to 11-applicants were paid daily wages as per SSR rates upto 1993-94 is not in dispute and the fact that they are entitled for the wages as per SSR rates is also not in dispute. The only contention of the petitioner-opposite party is that though SSR rates are applicable in spite of their best efforts,

they could not get approval from the higher authorities. Therefore, they have not paid the wages as per the SSR rates. Under these circumstances, the Judgments relied upon by the learned counsel for the petitioner needs to be examined. I n **A.V.D'Costa, Divisional Engineer, GIP,Railway, v. B.C.Patel,** the Apex Court held as under

> *"the authority set up under Section 15, Payment of Wages Act, 1936 is undisputably a tribunal of limited jurisdiction. Its power to hear and determine disputes must necessarily be found in the provisions of the Act. Such a tribunal, it is undoubted, cannot determine any controversy which is not within the ambit of those provisions."*

Relying upon the said Judgment, learned counsel for the petitioner contends that payment of SSR rates though not in dispute, the revised rates were not paid and even if the revised SSR rates are not paid, the respondents-applicants cannot maintain a petition under Section 15 of the Payment of Wages Act. In this regard, it may be necessary to notice the definition of wages as defined under the payment of Wages Act 1936 which reads as under:

> *"all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment express or implied, were fulfilled, be payable…… to a person employed in respect of his employment or of work done in such employment…"*

Thus, the above section also includes if the terms of employment, express or implied, were fulfilled, the remuneration be payable to a person employed in respect of his employment or work done in such employment.

In this case, admittedly, the SSR rates were paid upto 1993-94 and when it came to 1995-1996, though the SSR rates were revised, those rates were not paid to

the respondents 2 to 11. Therefore, it cannot be said that petition of this nature cannot be said to be not maintainable, since as per the admitted facts the terms of employment express or implied, were fulfilled. Therefore, the petitioner-opposite party is liable to pay wages according to SSR rates for the years 1994-95 and 1995-96 and such a power is available to the authority under Section 15 of the Payment of Wages Act, 1936. Learned counsel for the petitioner also relied upon another Judgment reported in **Administrator, Krishi Upaj Mandi Samiti, Doongargarh v. Gauri Shanker,** wherein it was held that the claim involving complicated questions of law and fact, cannot be adjudicated by the authority under the Payment of Wages Act, the authority has no jurisdiction to entertain and decide such claims.

In this case, no disputed question of facts are involved. It is an admitted fact that the respondents 2 to 11-applicants are entitled for SSR rates and in fact, they were paid SSR rates up to 1993-94. But they were not paid the revised SSR rates for the years 1994-95 and 1995-96. The judgments relied upon by the learned counsel for the petitioner have no relevance to the facts of this case.

Apart from the above, the petitioner had an effective and alternative remedy of filing an appeal under Section 17 of the Payment of Wages Act, 1936, before the learned District Judge. Without availing the said remedy, the petitioner has approached this Court by filing the writ petition. Writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, writ petition is dismissed. N costs.

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24-01-2006

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